



City of Norfolk

Office of the City Manager

C: ACM Stein

October 3, 2006

To the Honorable Council
City of Norfolk, Virginia

Re: Ordinance to Approve a Lease Agreement
with Harbor Tours, Inc. for berthing of
'Carrie B' at Liverpool Berth

Ladies and Gentlemen:

I. **Recommended Action:** Adopt ordinance.

II. **Overview**

This agenda item is a Lease Agreement that authorizes Harbor Tours, Inc. to use property adjacent to the City's Liverpool Berth for the purpose of docking and berthing the 'Carrie B'. The term of the Lease Agreement begins October 1, 2006 and terminates September 30, 2011.

III. **Analysis**

A. **General**

The Lease Agreement allows Harbor Tours, Inc. to use City-owned property adjacent to Liverpool Berth for the purpose of docking and berthing the 'Carrie B', which is sight-seeing vessel used as part of the company's charter/tour boating operations. The five-year Lease commences October 1, 2006 and terminates September 30, 2011.

B. **Fiscal**

By the terms of this Lease Agreement, Harbor Tours, Inc will pay annual fees to the City of \$6,945 in monthly payments. In addition to fees, Harbor Tours will pay the City for separately-billed water, sewerage, and electrical charges.

C. **Environmental**

There are no environmental issues related to the Lease Agreement.

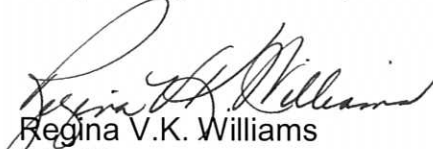
D. Community Outreach/Notification

In accordance with the Norfolk City Charter and Virginia state law, a public hearing is required for this item. Notification for this item was conducted through the City of Norfolk's agenda notification process. A public notification, as part of this process was placed in the Virginian Pilot on September 26, 2006.

IV. Conclusion

This Lease Agreement between the City of Norfolk and Harbor Tours, Inc. will allow the 'Carrie B' to dock and berth at property adjacent to Liverpool Berth for a term of five-years. Therefore, it is recommended that the City Council adopt the attached ordinance, which authorizes the City Manager to execute the Lease Agreement.


Respectfully submitted,



Regina V.K. Williams
City Manager

Coordination/Outreach

This letter has been coordinated with the Office of Real Estate and the City Attorney's Office.

Form and Correctness Approved: 

Contents Approved:

By 

Office of the City Attorney

NORFOLK, VIRGINIA

By 
DEPT. Executive**ORDINANCE No.**

AN ORDINANCE APPROVING AN AGREEMENT WITH HARBOR TOURS, INC. FOR DOCKING AND BERTHING THE CARRIE B ADJACENT TO THE CITY'S LIVERPOOL BERTH AND AUTHORIZING THE EXECUTION OF THE AGREEMENT.

- - -

BE IT ORDAINED BY THE COUNCIL of the City of Norfolk:

Section 1:- That the Agreement between Harbor Tours, Inc. and the City of Norfolk, a copy of which is attached hereto, whereby the City grants Harbor Tours the right to use property adjacent to the City's Liverpool Berth for docking and berthing the Harbor Tours vessel, the Carrie B, for the term beginning on October 1, 2006, and terminating September 30, 2011, at the rental rates set forth therein, is hereby approved.

Section 2:- That the City Manager is authorized to execute the Lease Agreement in behalf of the City and to do all things necessary and proper to carry out the terms of the Agreement.

Section 2:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

This Agreement entered into this ____ day of _____, 2006, between the **CITY OF NORFOLK** a political subdivision of the Commonwealth of Virginia (hereinafter "the City") and **HARBOR TOURS, INC.**, a Virginia corporation, with its address being 1238 Bay Street, Portsmouth, Virginia 23704 (hereinafter "Harbor Tours").

WITNESSETH:

WHEREAS, the City owns and operates berthing facilities for ships and boats;
and

WHEREAS, Harbor Tours, is a charter/tour boat operating firm and is licensed by the Commonwealth of Virginia, to operate a sightseeing boat serving the public upon the waters of the Elizabeth River and Hampton Roads and the Chesapeake Bay; and

WHEREAS, the City desires to promote increased waterfront activity by making available to the public a sightseeing vessel as a public attraction in conjunction with the City's waterfront development; and

WHEREAS, Harbor Tours has experience in operating such vessels and has appropriate United States Coast Guard approval, personnel and State licenses to do so, and is a capable operator firmly committed to undertake such a project.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained, the parties agree as follows:

1. **RIGHTS TO USE OF PREMISES.** The City hereby grants to Harbor Tours the right to use property adjacent to the City's Liverpool Berth ("the premises") for docking and berthing the Harbor Tours vessel, the Carrie B, ("the vessel"). The parties agree that the City will not be obligated to provide any alterations or improvements to the premises unless such are desired by the City.

The City reserves its right to use all areas in its waterfront for use by other vessels except as use is hereby granted to Harbor Tours. In addition, it is expressly understood and agreed by the parties that, from time to time during this Agreement, the City reserves the right to dislocate the vessel to accommodate other City uses of the premises for City festivals and, in addition, such dislocation may be necessary and is agreed during any renovations or construction of the facilities, spaces and areas which are the subject of this Agreement and used by the City and Harbor Tours. The City will attempt to provide an alternative docking area to Harbor Tours during such dislocation(s) if available, but the City does not guarantee the provisions of such alternative docking area. Such dislocation(s) shall not affect Harbor Tours' obligation to pay fees to the City except as otherwise provided by this Agreement or as agreed in writing by the parties.

2. **TERM.** The term of this Agreement shall be five (5) year period from October 1, 2006 and ending on September 30, 2011, unless sooner terminated by either party pursuant to this Agreement.

3. **FEES AND CHARGES.** Harbor Tours agrees to pay to the City fees for use of the premises for each year of the Agreement in the amount of Six thousand Nine Hundred Forty-five Dollars (\$6,945.00). Fees shall be payable and remitted for each month of the term and shall be due and paid by the tenth (10th) day of the following month to the Director of the Department of Facility and Enterprise Management (the "Director") in accordance with the City Code. During periods of dislocation of the vessel by the City of ten (10) or more consecutive days, monthly fees shall be forgiven for the month in which dislocation occurred, however, it is understood by the parties that it is not the City's intention to dislocate the vessel unnecessarily. Failure by Harbor Tours to pay fees when due and in arrears for more than fifteen (15) shall, without further notice, at the option of the City cause this Agreement to terminate and Harbor Tours shall immediately thereafter surrender the premises. In addition to fees, Harbor Tours agrees to pay the City for separately-billed water, sewage and electrical charges by remittance to the Director of amounts invoiced within thirty (30) days after Harbor Tours' receipt of invoice.

4. **VESSEL OPERATIONS.** The parties agree that Harbor Tours operations are limited to docking and departures, boarding and disembarking passengers, ticket sales, delivery and boarding provisions and routine dockside cleaning. The City will permit ingress and egress to the premises for Harbor Tours personnel and passengers.

Refueling, placement of trash, and major maintenance and repairs are prohibited at the premises; however, repairs may be undertaken with the permission of the Director. The City agrees to make available sewage pump point as well as water, existing electric power and a single jack telephone services desired by Harbor Tours at the premises. for the use of Harbor Tours at the premises. Any upgrades in utilities or services desired by Harbor Tours may be negotiated by the parties. Harbor Tours shall pay for such service billed at the regular rates as specified in the Norfolk City Code and as amended. The parties agree that all signage or advertising by Harbor Tours shall be as approved by the Director.

5. **OPERATION SCHEDULE.** Harbor Tours agrees to operate the vessel for passenger tours from the premises from April 1 through October 31 annually during the term of this Agreement, however this Agreement shall be in effect year-round during the term of the Agreement. A schedule of all cruises shall be timely filed with the Director. Harbor Tours reserves the right to tailor sailings to maximize public participation without encumbrances of time, duration, or destination of voyages.

6. **UNITED STATES COAST GUARD APPROVAL.** Harbor Tours must maintain current documentation for the vessel as follows:

- U.S.C.G. License of Active Captain of vessel
- U.S.C.G. Letter of Stability with expiration date
- U.S.C.G. Certificate of Inspection with expiration date
- Vessel documentation

Copies of above documentation shall be forwarded to the Director.

7. **INSURANCE AND INDEMNIFICATION.** Harbor Tours shall procure and shall maintain at all times during the term of this Agreement, Protection and Indemnity Insurance, with a company approved and licensed to conduct business within the Commonwealth of Virginia, in not less than the amount of Five Million Dollars (\$5,000,000.00) for the loss of life, bodily injury, and personal injury (libel, slander, false arrest, invasion of privacy, etc.) to persons injured aboard the vessel, or elsewhere, including members of the crew if such injury is deemed to be the responsibility of Harbor Tours, and property damages for Harbor Tour's liability for loss of, or damage to, the property of others aboard the vessel, fixed objects, and other watercraft and property on board them, insofar as the Collision Clause in the Hull Policy does not apply, arising out of any one event or occurrence, including the loading, unloading, operation of any vessel or the adjoining ways, piers, docks and all other land based operations of Harbor Tours used to conduct tours, maintenance and repairs of the vessel and land based operations.

By executing this Agreement, Harbor Tours confirms that the Protection and Indemnity Insurance Policy provides full coverage for all expenses related to the removal, marking or destroying of any vessel or watercraft that sinks in private waters or obstructs any waterway, or constitutes a menace to navigation, and that coverage will be kept in force during the term of this Agreement.

In addition, Harbor Tours confirms that it has purchased a policy through the Water Quality Insurance syndicate covering the accidental discharge of fuel oil or other pollution-like substances into the water to a limit of Five Million Dollars (\$5,000,000.00) per occurrence, and that this coverage will be kept in full force and effect during the term of this Agreement.

Harbor Tours further confirms that the cost of litigation, including necessary bonds for the release from court seizure, is covered whether against the vessel (in rem) or against

the owner (in personam) by the Protection and Indemnity Insurance Policy, and that coverage will be kept in force during the term of this Agreement.

By executing this Agreement Harbor Tours confirms to the City that the vessel is seaworthy, will be maintained as seaworthy throughout the term of this Agreement and will be used for legal purposes, only. The City of Norfolk has the right to request a United States Coast Guard inspection of the vessel at any time and to receive the results of any and all inspections made by the United States Coast Guard during the time of this Agreement.

The Protection and Indemnity Insurance policy will include coverage for all waters in which Harbor Tours operates its vessel, and provide coverage for all the months of all the years during the term of this Agreement when the vessel is in use, including those months the vessel is being readied for service or being prepared for lay-ups.

The parties agree that the City of Norfolk will not be responsible to Harbor Tours nor to any other person or entity for any damages to the hulls of any vessel or watercraft. All damages to the hull, equipment, machinery, stores, provisions, furnishings, boats, as well as equipment not owned by Harbor Tours which is installed on the vessel for the use provided and other items usually included within the Hull Insurance Policy are the total responsibility of Harbor Tours, including the loss of income arising from any type of hull damages or any other actions of the City of Norfolk.

By executing this Agreement Harbor Tours confirms to the City that its Hull Insurance Policy includes coverage under the deliberate damage (Pollution Hazard) clause and that coverage will be kept in full force during the term of this Agreement.

Harbor Tours also agrees to purchase and retain in force during the term of this Agreement Workers Compensation and Employers Liability Insurance on a statutory basis,

including all maritime coverages that are necessary to comply with the Commonwealth of Virginia's and Federal Government's rules and regulations pertaining to Workers Compensation and Employers Liability Insurance coverages arising out of the Harbor Tours' activities, either on land or water.

Harbor Tours also agrees to provide to the City evidence of Automobile Insurance of no less than One Million Dollars (\$1,000,000.00) Combined Single Limits and One Million Dollars (\$1,000,000.00) Uninsured Motorist including hired and non-owned automobiles for all automobiles either owned, leased, rented or used by others on behalf of Harbor Tours, placed with an insurance company licensed and approved to conduct business within the Commonwealth of Virginia. A certificate of insurance will be provided to the City upon execution of this Agreement and on and its annual renewal dates.

Harbor Tours also agrees to provide to the City, evidence of Commercial General Liability for no less than One Million Dollars (\$1,000,000.00) combined single limit, with coverage for bodily injury, property damage, personal injury, (libel, slander, false arrest, invasion of privacy, etc.) covering their operations and placed with an insurance company licensed and approved to conduct business within the Commonwealth of Virginia.

The parties agree that the City will be named as an additional insured on all insurance policies and coverages set forth in this Agreement, including but not limited to Protection and Indemnity Commercial General Liability, the Water Quality Insurance Syndicate coverage and Bumbershoot Policies required pursuant to this Agreement. Certificates of Insurance and Policy endorsements reflecting all required insurance policies and coverages will be sent to the City of Norfolk, in care of the City Attorney's office, within thirty (30) days of the commencement of this Agreement and its annual renewals. The Certificates and Endorsements

will also reflect a sixty (60) day prior notice of cancellation or non-renewal to be given the City of Norfolk by the insurance company(ies).

Harbor Tours agrees to defend, indemnify and hold the City of Norfolk, its officers, employees, and agents harmless from any and all damages, fees, fines, expenses of any kind whatsoever arising from and including all claims, suits, actions or proceedings arising from the Harbor Tours' operations, including the actions of the United States Coast Guard or other governmental agencies.

8. **FORCE MAJEURE.** The parties agree that any act required to be done by either party may be excused or the time for performance extended by any delay caused by an act of God, war, civil disturbance, fire, casualty or similar occurrence.

9. **INDEPENDENT CONTRACTOR.** The parties agree that Harbor Tours and its officers, employees and agents shall be independent contractors and shall not be considered to be employees of the City for any purpose whatsoever.

10. **TERMINATION OF AGREEMENT.** The parties agree that if either party shall fail to perform, breach or comply with the terms or conditions of this Agreement and such failure to perform, breach or noncompliance shall continue unremedied for ten (10) days after written notice sent by the other party, this Agreement shall be deemed terminated, unless otherwise agreed by the parties.

11. **NON-ASSIGNMENT.** Harbor Tours may not, during the term of this Agreement, assign in whole or in part any of the rights or privileges conferred by this Agreement, unless approved and agreed in writing by the City, such approval by the City not being unreasonably withheld. Notwithstanding any assignment approved and agreed by the City, the parties agree that the Harbor Tours shall remain bound and liable for any breach or failure to perform committed by the assignee.

12. **NOTICES.** All notices, demands and requests required to be given or which may be given hereunder shall be in writing and shall be deemed to have been properly given (a) in the case of the City, if sent by United States registered or certified mailed, postage prepaid, addressed to City, c/o City Manager, Room 1101, City Hall Building, Norfolk, Virginia 23510, with a copy to the City Attorney, 908 City Hall Building, Norfolk, Virginia 23510; and (b) in the case of Harbor Tours, if sent by United States registered or certified mail, postage prepaid, to Harbor Tours, Inc., 1238 Bay Street, Portsmouth, VA 23704.

13. **CONFLICT OF INTERESTS.** Harbor Tours, on behalf of its officers and employees, as well as any persons who could be affected by Chapter 22, Title 2.1 of the Code of Virginia, Section 2.1-347 et seq. known as the Virginia Conflict of Interests Act hereby certifies by executing this Agreement that it has diligently inquired of those persons set forth above whether any such person is within the purview of the Virginia Conflict of Interests Act and further certifies that as a result of said inquiry all requirements of the Virginia Conflict of Interests Act have been complied with by Harbor Tours and such persons.

IN WITNESS WHEREOF, the parties have caused this writing to be executed by their duly authorized officers.

CITY OF NORFOLK

By: _____
City Manager

ATTEST:

City Clerk

Contents Approved:

Executive

Approved as to Form & Correctness:

Mary L. G. Nexsen, Deputy City Attorney
Office of the Norfolk City Attorney

HARBOR TOURS, INC.

By: _____
President